

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of  
Aguakem Caribe, Inc.  
**Respondent**

**JOINT SET OF STIPULATED FACTS,  
EXHIBITS AND TESTIMONY**

Docket No. RCRA-02-2009-7110

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2010 NOV 17 P 1:52  
REGIONAL HEARING  
CLERK

**JOINT SET OF STIPULATED FACTS, EXHIBITS AND TESTIMONY**  
**To Respondent's Counsel:**

Pursuant to the request made by Hon. Barbara A. Gunning, Administrative Law Judge, on the Order Scheduling Hearing, dated July 15, 2010, the Complainant and the Respondent in the above captioned matter hereby submit the Joint Set of Stipulated Facts, Exhibits and Testimony

**JOINT SET OF STIPULATED FACTS, EXHIBITS AND TESTIMONY**

**I. Stipulated Facts**

The Parties stipulate the following facts as admitted and require no proof:

- a. Respondent Aguakem Caribe, Inc. is a corporation organized and authorized to do business under the laws of the Commonwealth of Puerto Rico.
- b. Respondent is a "person" (as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
- c. Mr. Jorge J. Unanue is the President of Aguakem Caribe, Inc.
- d. Respondent has been in the chemical manufacturing industry since at least 1995.
- e. Respondent manufactures a variety of chemical products that are used in private and public owned potable and wastewater treatment plants.
- f. Respondent's former facility, located in a warehouse identified as an area in Building 6 on the Puerto de Ponce, a property owned by the Port of Ponce Authority ("PPA"), is located in PR-12, Santiago de los Caballeros

Ave., Ponce, Puerto Rico (hereinafter the "Facility").

- g. Respondent's former Facility, constitutes a "facility," within the meaning of 40 C.F.R. § 260.10.
- h. Respondent had a lease agreement for the former Facility with PPA, since approximately June 28, 1995 to approximately May 23, 2005, thereafter the lease agreement continued on a month to month basis until September 2006, at which time the Municipio of Ponce sought and received a judicial order of eviction. The parties negotiated an extension of time for Aguakem to remain in the Facility through December 2006.
- i. Respondent began operations at its former facility around January 1996.
- j. The Facility consisted of the following areas: Office; Laboratory; Tank farm; Secondary containment system; Process Area; Storage Area and Unloading/loading dock.
- k. Respondent was the operator of the Facility from at least June 28, 1995 to approximately December 28, 2006.
- l. Respondent removed equipment and materials from its Facility to its current facility prior to December 28, 2006.
- m. The Respondent did not obtain an EPA ID number for the operations it conducted at the Facility.
- n. On June 27, 2007, EPA entered into an Administrative Order on Consent (AOC) with PPA and Respondent, under Section 104 of CERCLA, 42 U.S.C. Section 9604.

## II. Stipulated Exhibits

The Parties stipulate the following exhibits as admissible into evidence and may be marked as such during the hearing:

- i. CE1<sup>1</sup> Administrative Complaint, Docket No. RCRA-02-2009-7110.
- ii. CE2.
- iii. CE3.
- iv. CE4.
- v. CE5.
- vi. CE6.

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<sup>1</sup>Complainant's exhibits will hereinafter be identified as CX.

- vii. CE7.
- viii. CE8.
- ix. CE9.
- x. CE10.
- xi. CE11.
- xii. CE13.
- ivx. CE14.

### **III. Stipulated Testimony**

The Parties stipulate to the following testimony as admitted and require no proof:

Witnesses for the Complainant:

1. Eduardo R. González, PE
  - Mr. Gonzalez is a Senior Environmental Engineer, under the RCRA Response and Remediation Branch, Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2.
  - Mr. Gonzalez has conducted numerous CEI in Puerto Rico.
  - Mr. Gonzalez has vast experience in the RCRA penalty calculation method used in the present case.
  - Mr. González participated in the Inspections conducted at Respondent's Facility.
  - Mr. Gonzalez has vast experience as an Inspector under the RCRA program.
  - Mr. Gonzalez received PP's response to a RCRA NOV, which included the lease agreements between PP and the Respondent.
  - Mr. Gonzalez reviewed the proposed penalty and found it met the statutory RCRA requirements.
2. Zolymer Luna
  - Ms. Luna will testify that she is an Environmental Engineer under the RCRA Response and Remediation Branch Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2.

Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2.

- Ms. Luna participated in the Inspections conducted at Respondent's Facility.
- Ms. Luna reviewed Respondent's Information request response.
- Ms. Luna calculated the proposed penalty using the statutory provisions under RCRA.

3. Jesse Aviles

- Mr. Aviles will testify that he is Environmental Scientist under the RCRA Response and Remediation Branch Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2.
- Mr. Aviles participated in the Inspections conducted at Respondent's Facility.

WHEREFORE the Parties respectfully request that this Honorable Court take notice of the aforementioned Stipulated Fact, Exhibits, and Testimony.

Respectfully submitted in San Juan, Puerto Rico, on November 16, 2010.

For Complainant:

  
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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Joint Set of Stipulated Facts, Exhibits and Testimony dated November 16, 2010, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by UPS to:

Karen Maples  
Regional Hearing Clerk  
Region 2  
U.S. Environmental Protection Agency  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866.

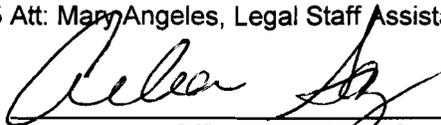
Copy by UPS to:

Attorney for Respondent:  
Armando Llorens, Esq.  
FURGANG & ADWAR  
1325 Avenue of the Americas, 28<sup>th</sup> Floor  
New York, New York 10019  
[Phone: (212) 725-1818]

Copy by UPS to:

Administrative Law Judge:  
The Honorable Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Franklin Court Building  
1099 14<sup>th</sup> Street, N.W., Suite 350  
Washington, D.C. 20005  
[Phone: (202) 564-6255 Att: Mary Angeles, Legal Staff Assistant]

11/16/2010  
Date



Office of Regional Counsel – Caribbean Team